IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 9TH JANUARY 2007 / 19TH POUSHA 1928

WP(C).No. 13378 of 2006(P)

OS.828/2003 of I ADDL.M.C.,ERNAKULAM
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PETITIONER:
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1. RABIA, W/O.ASSAINAR,
THETTAYIL VEETTIL,
3/629, KARIPPAI ROAD, KALAMASSERY.

2. NOORJAHAN, D/O.IBRAHIM,
THETTAYIL VEETTIL,
3/629, KARIPPAL ROAD,
KALAMASSERY.

BY ADV. SRI.DINESH R.SHENOY
SRI.K.J.SEBASTIAN

RESPONDENTS:
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1. THE KALAMASSERY MUNICIPALITY,
REP. BY THE SECRETARY,
KALAMASSERY MUNICIPALITY,
MUNICIPAL HOUSE, KALAMASSERY.

2. THE STATE OF KERALA,
REP. BY THE DISTRICT COLLECTOR,
ERNAKULAM.

BY ADV. SRI.M.K.ABOOBACKER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX:

EXT.P1: COPY OF PLAINT IN OS 828/03

EXT.P2: COPY OF WRITTEN STATEMENT FILED BY R1 DT.29.9.03

EXT.P3: COPY OF REPORT SUBMITTED BY ADV.COMMISSIONER P.LATHA TOGETHER WITH ROUGH SKETCH

EXT.P4: COPY OF IA 4938/04 IN OS 828/03

EXT.P5: COPY OF REPORT AND SURVEY SKETCH DT.21.1.06 SUBMITTED BY ADV.COMMISSIONER IN IA 4938/094 IN OS 828/03

EXT.P6: COPY OF OBJECTION DT.4.2.06 SUBMITTED BY PETITIONERS IN IS 4938/04 IN OS 828/03

EXT.P7: COPY OF IA 2646/06 IN OS 828/03

EXT.P8: COPY OF COUNTER AFFIDAVIT FILED IN IA 2646/06 IN OS 828/03

EXT.P9: COPY OF IA 2645/06 IN OS 828/03

EXT.P10: COPY OF COUNTER AFFIDAVIT FILED BY R1 IN IA 2645/06 IN OS 828/03

EXT.P11: COPY OF ORDER DT.18/3/06 IN IA 2646/06 IN OS 828/03

EXT.P12: COPY OF ORDER DT.18/3/06 IN IA 2645/06 IN OS 828/03

//True copy//

PA TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.13378 OF 2006

Dated 9th January 2007

J U D G M E N T

Petitioners are plaintiffs and respondents defendants in O.S.828/03 on the file of First Additional Munsiff court, Ernakulam. Suit was filed seeking decree for declaration of title and possession of plaint schedule property. Plaint schedule property as shown in the schedule is 10 cents of property in survey Nos.1159/7/2, 1159/6 , 1159/7/4 of Thrikkakara north village. In para 1 of plaint itself it was contended that it forms the north eastern part of 70 cents of land and excess, obtained by plaintiffs as per registered deed 4127/1987 from Beerankutty Haji, Meethiankunju and Aboobacker. A commission was appointed by learned Munsiff, to identify the plaint schedule property. Commissioner submitted the report. Plaintiffs filed I.A. 2646/06 to amend the plaint under Order VI Rule 17 of Code of Civil Procedure and I.A.2645/06 to remit the report back to the commissioner to submit a further report after

identifying the property with the assistance of a surveyor. Under Ext.P12 order learned Munsiff dismissed the application for amendment. Under Ext.P11 order learned Munsiff dismissed the application filed to remit the report. These orders are challenged in this petition filed under Article 227 of Constitution of India.

2. Learned counsel appearing for petitioners and respondents were heard.

3. Learned counsel appearing for petitioners contended that amendment sought for is only to show the property obtained by petitioners under the registered deed as a separate schedule in the plaint and the original plaint schedule property as another item. If the application to amend the plaint as sought for it will not alter the nature or character of the suit in such circumstances, application should have been allowed. It was also argued that though commissioner was directed to identify the property of plaintiff and plaint schedule schedule property, commissioner identified only plaint schedule property and without proper identification of property of plaintiffs under the sale deed no effective decree could be granted and hence

learned Munsiff should have remitted the report back to the commissioner.

4. Learned counsel appearing for respondents argued that plaint was amended earlier and when suit was filed, petitioners could have shown the entire 70 excess cents as one of the items of the plaint schedule properties and when suit was included in the special list they are not entitled to get the plaint amended and therefore there is no reason to interfere with Ext.P1 or P2 orders. It was argued that commissioner submitted a report and learned Munsiff found that there is no necessity to remit the report and in such circumstances the petition is only to be dismissed.

5. Order VI Rule 17 of Code of Civil Procedure vests a wide power on the trial court to allow the amendment, if it is necessary for a just decision of the case. What was sought to be amended by plaintiffs is only to show the entire property of plaintiffs, of which 10 cents which originally shown as plaint schedule property, as item No.1 of the plaint schedule properties and to show the original plaint schedule property as item No.2. If amendment is allowed the character or nature of the suit will not

be changed. Even otherwise, what was contended by plaintiffs in the plaint was that 10 cents described as plaint schedule property is the north eastern part of 70 cents and excess property obtained by petitioners under the registered sale deed. By showing that property as item No.1 of the property, no change will not be there either on the nature or character of the suit. In such circumstances, learned Munsiff should have allowed the application and permit plaintiffs to amend the plaint. So also when the commissioner has not identified the entire property obtained by plaintiffs as per the registered sale deed 4127/1987 the said ten cents which was originally shown as plaint schedule property cannot be properly identified. In such circumstances, learned Munsiff should have remitted the report back to the commissioner as sought for.

6. Exts.P11 and P12 orders are quashed. I.A.2645/06 stands allowed and petitioners are permitted to amend the plaint as sought for therein. Defendants are entitled to file additional written statement. Ext.P11 order is also quashed. I.A.2646/06 stands allowed. Learned Munsiff is directed to remit the report back to the commissioner to file a

further report after identification of the plaint schedule properties as amended with the assistance of surveyor, at the expenses of plaintiffs.

Writ petition is disposed accordingly.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.